

relating to the authority of military personnel to obtain certification to teach career and technology education classes in public schools.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter B, Chapter 21, Education Code, is amended by adding Section 21.0487 to read as follows:

Sec.21.0487. TRADES AND INDUSTRIES EDUCATION CERTIFICATION FOR MILITARY PERSONNEL. (a) *To the extent that rules adopted under this subchapter require a person seeking trades and industries education certification to hold a license or other professional credential for a specific trade, a person who is a current or former member of the United States armed services is considered to have satisfied that requirement if the person has experience in that trade obtained through military service.*

(b) *The board may not propose rules requiring a current or former member of the United States armed services who seeks career and technology education certification for a specific trade to hold a credential related to that trade or possess experience related to that trade other than the experience in that trade obtained through military service.*

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Passed by the House on May 8, 2015: Yeas 142, Nays 0, 1 present, not voting; passed by the Senate on May 24, 2015: Yeas 30, Nays 0.

Approved June 17, 2015.

Effective June 17, 2015.

**DIVERSION, TREATMENT, AND USE OF MARINE SEAWATER
AND THE DISCHARGE OF TREATED MARINE SEAWATER
AND WASTE RESULTING FROM THE DESALINATION OF
MARINE SEAWATER; ADDING PROVISIONS SUBJECT TO A
CRIMINAL PENALTY**

CHAPTER 756

H.B. No. 2031

AN ACT

relating to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater; adding provisions subject to a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. (a) With this state facing an ongoing drought, continuing population growth, and the need to remain economically competitive, every effort must be made to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state.

(b) Currently, the projected long-term water needs of this state far exceed the firm supplies that are available and that can reasonably be made available from freshwater sources within this state. The legislature recognizes the importance of providing for this state's current and future water needs at all times, including, consistent with reasonable drought contingency measures, during severe droughts.

(c) In this state, marine seawater is a potential new source of water for drinking and

other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico. The purpose of this Act is to streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination.

(d) The legislature finds that marine seawater desalination facilities should be cost-effectively and timely developed, concurrently with other water planning solutions, to help this state meet its current and future water needs.

(e) The legislature finds that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections, in order to avoid unnecessary costs, delays, and uncertainty and thereby help justify the investment of significant resources in the development of such facilities.

SECTION 2. Section 5.509(a), Water Code, is amended to read as follows:

(a) The commission may issue an emergency or temporary order relating to the discharge of waste or pollutants into or adjacent to water in the state if:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Chapter 18 or 26, *as applicable*, to effectuate the policy and purposes of that chapter; and

(2) the commission finds that:

(A) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, or severe property damage;

(ii) prevent severe economic loss or ameliorate serious drought conditions, to the extent consistent with the requirements for United States Environmental Protection Agency authorization of a state permit program; or

(iii) make necessary and unforeseen repairs to a facility;

(B) there is no feasible alternative to the proposed discharge;

(C) the discharge will not cause significant hazard to human life and health, unreasonable damage to the property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(D) the discharge will not present a significant hazard to the uses that will be made of the receiving water after the discharge.

SECTION 3. Section 5.551, Water Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Section 18.002, this subchapter does not apply to a permit issued under Section 18.005(c)(2) if the point of discharge is not located within three miles of any point located on the coast of this state.

SECTION 4. Section 7.302(a), Water Code, is amended to read as follows:

(a) This section applies to a permit or exemption issued by the commission under:

(1) *Section 18.005 of this code*;

(2) Chapter 26, 27, 28, or 31 of this code;

(3) ~~[(2)]~~ Subchapter C or R, Chapter 361, Health and Safety Code;

(4) ~~[(3)]~~ Subchapter D, Chapter 366, Health and Safety Code;

(5) ~~[(4)]~~ Chapter 382, Health and Safety Code; or

(6) ~~[(5)]~~ a rule adopted under any of those provisions.

SECTION 5. Section 11.0237(b), Water Code, is amended to read as follows:

(b) This section does not alter the commission's obligations under Section 11.042(a-1), (b), or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, ~~or~~ 16.059, *or 18.004*.

SECTION 6. Section 11.082, Water Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

- (1) Section 18.003 or a permit issued under that section; or*
- (2) Section 18.004 or an authorization granted under that section.*

SECTION 7. Section 11.0842, Water Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Section 18.002, this section does not apply to a violation of:

- (1) Section 18.003 or a permit issued under that section; or*
- (2) Section 18.004 or an authorization granted under that section.*

SECTION 8. Section 11.121, Water Code, is amended to read as follows:

Sec. 11.121. PERMIT REQUIRED. Except as provided in Sections 11.142, 11.1421, ~~and~~ 11.1422, ~~and 18.003 [of this code]~~, no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

SECTION 9. Section 16.053(e), Water Code, is amended to read as follows:

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; ~~and~~

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; *and*

(J) *opportunities for and the benefits of developing large-scale desalination facilities for marine seawater that serve local or regional entities;*

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists;

(8) describes the impact of proposed water projects on water quality; and

(9) includes information on:

(A) projected water use and conservation in the regional water planning area; and

(B) the implementation of state and regional water plan projects, including water conservation strategies, necessary to meet the state's projected water demands.

SECTION 10. Subtitle C, Title 2, Water Code, is amended by adding Chapter 18 to read as follows:

CHAPTER 18. MARINE SEAWATER DESALINATION PROJECTS

Sec. 18.001. *DEFINITIONS. In this chapter:*

(1) *"Commission" means the Texas Commission on Environmental Quality.*

(2) *"Marine seawater" means water that is derived from the Gulf of Mexico.*

(3) *"Project" means:*

(A) *a marine seawater desalination project; or*

(B) *a facility for the storage, conveyance, and delivery of desalinated marine seawater.*

Sec. 18.002. *RELATIONSHIP TO OTHER LAWS. (a) Except as provided by Subsection (b) or as otherwise provided by law:*

(1) *Chapter 11 applies to a permit or authorization under Section 18.003 or 18.004 in the same manner as that chapter applies to a permit or authorization under that chapter; and*

(2) *Chapter 26 applies to a permit under Section 18.005 in the same manner as that chapter applies to a permit under that chapter.*

(b) *In the event of a conflict between this chapter and Chapter 11 or 26, this chapter controls.*

(c) *This chapter is intended to provide an alternative procedure for obtaining an authorization to divert and use state water that consists of marine seawater or to discharge treated marine seawater or waste resulting from the desalination of treated marine seawater under the circumstances provided by this chapter. This chapter does not affect the authority of a person to:*

(1) *divert and use state water that consists of marine seawater in accordance with*

the procedures provided by Chapter 11, including the authority to divert marine seawater from a point of diversion located in a bay or estuary; or

(2) discharge treated marine seawater or waste resulting from the desalination of treated marine seawater in accordance with the procedures provided by Chapter 26, including the authority to discharge waste resulting from the desalination of marine seawater into a bay or estuary.

Sec. 18.003. DIVERSIONS OF MARINE SEAWATER. (a) *A person must obtain a permit to divert and use state water that consists of marine seawater if:*

(1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or

(2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter.

(b) A person may divert and use state water that consists of marine seawater without obtaining a permit if Subsection (a) does not apply.

(c) A person who diverts and uses state water that consists of marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) must determine the total dissolved solids concentration of the seawater at the water source by monthly sampling and analysis and provide the data collected to the commission. A person may not begin construction of a facility for the diversion of marine seawater without obtaining a permit until the person has provided data to the commission based on the analysis of samples taken at the water source over a period of at least one year demonstrating that Subsection (a)(2) does not apply. A person who has begun construction of a facility for the diversion of marine seawater without obtaining a permit because the person has demonstrated that Subsection (a)(2) does not apply is not required to obtain a permit for the facility if the total dissolved solids concentration of the seawater at the water source subsequently changes so that Subsection (a)(2) applies.

(d) A person may use marine seawater diverted under a permit required by Subsection (a) or as authorized by Subsection (b) for any beneficial purpose, but only if the seawater is treated in accordance with rules adopted by the commission before it is used. Rules adopted under this subsection may impose different treatment requirements based on the purpose for which the seawater is to be used.

(e) The commission shall adopt rules providing an expedited procedure for acting on an application for a permit required by Subsection (a). The rules must provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit.

(f) A person may not divert marine seawater under a permit required by Subsection (a) or as authorized by Subsection (b) from a point of diversion located in a bay or estuary.

(g) An application for a permit required by Subsection (a) must address the points from which, and the rate at which, the facility the applicant proposes to construct will divert marine seawater.

(h) The commission by rule shall prescribe reasonable measures to minimize impingement and entrainment.

(i) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended diversion zones for designation by the commission and recommendations for the number of points from which, and the rate at which, a facility may divert marine seawater. Not later than September 1, 2020, the commission by rule shall designate appropriate diversion zones. A diversion zone may be contiguous to, be the same as, or overlap a discharge zone. The point or points from which a facility may divert marine seawater must be located in a diversion zone designated by the commission under rules adopted under this subsection if:

(1) the facility is authorized by a permit as required by Subsection (a) issued after the rules are adopted; or

(2) the facility is exempt under Subsection (b) from the requirement of a permit and construction of the facility begins after the rules are adopted.

(j) Until the commission adopts rules under Subsection (i), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point or points from which a facility the person proposes to construct may divert marine seawater before submitting an application for a permit for the facility if Subsection (a) applies or before beginning construction of the facility if Subsection (b) applies.

Sec. 18.004. BED AND BANKS AUTHORIZATION. (a) With prior authorization granted under rules prescribed by the commission, a person may use the bed and banks of any flowing natural stream in this state or a lake, reservoir, or other impoundment in this state to convey marine seawater that has been treated so as to meet standards that are at least as stringent as the water quality standards applicable to the receiving stream or impoundment adopted by the commission.

(b) The commission shall provide for notice and an opportunity for the submission of written comment but may not provide an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use the bed and banks of a flowing natural stream to convey treated marine seawater. The commission shall provide for notice, an opportunity for the submission of written comment, and an opportunity for a contested case hearing regarding commission actions relating to an application for an authorization under this section to use a lake, reservoir, or other impoundment to convey treated marine seawater.

(c) A person may not discharge treated marine seawater into a flowing natural stream in this state or a lake, reservoir, or other impoundment in this state for the purpose of conveyance of the water under an authorization granted under this section unless the person holds a permit issued under Section 18.005 authorizing the discharge.

(d) Treated marine seawater that is conveyed under an authorization granted under this section may be used only by the person to whom the authorization is granted.

(e) Section 11.042(c) applies to an authorization granted under this section in the same manner as that subsection applies to an authorization granted under Section 11.042.

(f) This section does not prohibit a person from conveying treated marine seawater in any other manner authorized by law.

Sec. 18.005. DISCHARGE OF TREATED MARINE SEAWATER OR WASTE RESULTING FROM DESALINATION OF MARINE SEAWATER. (a) In this section, "permit," "person," "to discharge," "waste," and "water" have the meanings assigned by Section 26.001.

(b) Section 26.011 applies to discharges governed by this section in the same manner as that section applies to discharges governed by Chapter 26.

(c) A person must obtain a permit to discharge:

(1) treated marine seawater into a natural stream in this state or a lake, reservoir, or other impoundment in this state; or

(2) waste resulting from the desalination of treated marine seawater into the Gulf of Mexico.

(d) A person shall:

(1) treat marine seawater so as to meet standards that are at least as stringent as the water quality standards adopted by the commission applicable to the receiving stream or impoundment before discharging the seawater under this section; and

(2) comply with all applicable state and federal requirements when discharging waste resulting from the desalination of marine seawater into the Gulf of Mexico.

(e) The commission by rule shall provide an expedited procedure for acting on an application for a permit under this section. The rules must provide for:

(1) notice, an opportunity for the submission of written comment, and an opportunity to request a public meeting and may authorize a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(1);

(2) notice, an opportunity for the submission of written comment, an opportunity to request a public meeting, and an opportunity for a contested case hearing regarding commission actions relating to an application for a permit described by Subsection (c)(2) if the point of discharge is located within three miles of any point located on the coast of this state; and

(3) notice and an opportunity for the submission of written comment regarding commission actions relating to an application for a permit described by Subsection (c)(2) if Subdivision (2) of this subsection does not apply.

(f) A person may not discharge waste resulting from the desalination of marine seawater into a bay or estuary under a permit issued under Subsection (c)(2).

(g) The Parks and Wildlife Department and the General Land Office jointly shall conduct a study to identify zones in the Gulf of Mexico that are appropriate for the discharge of waste resulting from the desalination of marine seawater, taking into account the need to protect marine organisms. Not later than September 1, 2018, the Parks and Wildlife Department and the General Land Office shall submit a report on the results of the study to the commission. The report must include recommended discharge zones for designation by the commission. Not later than September 1, 2020, the commission by rule shall designate appropriate discharge zones. The point at which a facility may discharge waste resulting from the desalination of marine seawater must be located in a discharge zone designated by the commission under rules adopted under this subsection if the facility is authorized by a permit issued under Subsection (c)(2) after the rules are adopted.

(h) Until the commission adopts rules under Subsection (g), a person must consult the Parks and Wildlife Department and the General Land Office regarding the point at which the facility the person proposes to construct may discharge waste resulting from the desalination of marine seawater before submitting an application for a permit under Subsection (c)(2) for the facility.

SECTION 11. Section 26.0291(a), Water Code, is amended to read as follows:

(a) An annual water quality fee is imposed on:

(1) each wastewater discharge permit holder, including the holder of a permit issued under Section 18.005, for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records, provided that the commission by rule shall ensure that no fee shall be assessed for the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed under Subdivision (1) of this subsection.

SECTION 12. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0316 to read as follows:

Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING WATER. (a) This section applies only to a desalination facility that is intended to treat marine seawater for the purpose of producing water for the public drinking water supply. This section does not apply to a desalination facility used to produce nonpotable water.

(b) The commission shall adopt rules to:

(1) allow water treated by a desalination facility to be used as public drinking water; and

(2) ensure that water treated by a desalination facility meets the requirements of Section 341.031 and rules adopted under that section.

(c) A person may not begin construction of a desalination facility that treats marine seawater for the purpose of removing primary or secondary drinking water contaminants unless the commission approves the construction of the facility.

SECTION 13. Section 16.060, Water Code, is repealed.

SECTION 14. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Passed by the House on May 1, 2015: Yeas 137, Nays 0, 2 present, not voting; passed by the Senate on May 26, 2015: Yeas 31, Nays 0.

Approved June 17, 2015.

Effective June 17, 2015.

INDEMNIFICATION AND DUTIES OF ENGINEERS AND ARCHITECTS UNDER CERTAIN GOVERNMENTAL CONTRACTS

CHAPTER 757

H.B. No. 2049

AN ACT

relating to indemnification and duties of engineers and architects under certain governmental contracts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 271.904, Local Government Code, is amended to read as follows:

Sec. 271.904. **ENGINEERING OR ARCHITECTURAL SERVICES CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER OR ARCHITECT.** (a) A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify ~~or~~ hold harmless ~~or defend~~ the governmental agency against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

(b) *Except as provided by Subsection (c), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. A covenant or promise may provide for the reimbursement of a governmental agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.*

(c) *Notwithstanding Subsection (b), a governmental agency may require in a contract for engineering or architectural services to which the governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.*

(d) *A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services:*

(1) with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and